

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION**

ROBERT HOLMAN,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 1:21-cv-01085-STA-jay
)	
THOMAS J. VILSACK, in his official)	
capacity as Secretary of the United States)	
Department of Agriculture, and)	
)	
ZACH DUCHENEAUX, in his official)	
capacity as Administrator of the Farm Service)	
Agency,)	
)	
Defendants.)	

**RESPONSE IN OPPOSITION TO CONDITIONAL MOTION FOR LEAVE TO
INTERVENE AS DEFENDANTS**

Plaintiff hereby respectfully responds in opposition to the Conditional Motion for Leave to Intervene as Defendants. (Doc. 27.) Proposed-Intervenors ask this Court to defer consideration until “future developments in this lawsuit indicate that the organizations’ interests diverge from the Government’s.” (*Id.* at PageID 507.) Plaintiff agrees with Proposed-Intervenors that, as of now, no reason exists to think that their position is not fully aligned with the government’s. (*Id.* at 511) (recognizing “[t]hey presently share the same objective....”). If, however, Proposed-Intervenors are requesting an order from the Court permitting them to enter as Intervenors once Plaintiff-Intervenors unilaterally judge their interests to be divergent, this Court should deny that request.

Any ruling other than one that defers consideration would be premature at this point. Plaintiff should be allowed to evaluate Proposed-Intervenors' claim of interest divergence based

on materialized facts, not speculative possibilities. And even if Proposed-Intervenors can show a divergence of interests, they have not addressed the burdens that they would impose on Plaintiff, a farmer represented by two public interest firms. *See generally* Fed. R. Civ. P. 24(b)(3) (“In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties’ rights.”). Proposed-Intervenors have not proposed an arrangement with Defendants that would address the burden it would pose on Plaintiff to add two organizations to the litigation. They have not shown, for instance, that they will share interrogatories, depositions, briefing page limits, or argument time with existing Defendants so as to avoid burdening Plaintiff. This matter is best addressed once it comes into sharper focus.

Plaintiff respectfully submits that the Court should (1) reserve ruling until the matter ripens to a point where Proposed-Intervenors view their interests as divergent; (2) allow Proposed-Intervenors to supplement their briefing, identifying precisely how their interests diverge, and any agreement they have reached with Defendants; (3) allow Plaintiff to respond. An orderly process as outlined would best ensure a correct result.

Dated: July 7, 2021.

Respectfully submitted,

s/ B. H. Boucek
BRADEN H. BOUCEK
TN BPR No. 021399
CELIA H. O’LEARY*
GA Bar No. 747472
Southeastern Legal Foundation
560 W. Crossville Road, Suite 104
Roswell, GA 30075
Telephone: (770) 977-2131
bboucek@southeasternlegal.org
coleary@southeasternlegal.org

William E. Trachman*
CO. Bar No. 45684
Corey C. Bartkus*
CO. Bar No. 54789
Mountain States Legal Foundation
2596 S. Lewis Way
Lakewood, Colorado 80227
Telephone: (303) 292-2021
Facsimile: (303) 292-1980
wtrachman@mslegal.org
corey@mslegal.org
*Appearing Pro Hac Vice

Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on the date indicated below I filed the documents on the Court's electronic filing system. I further certify that I served the following persons in the manner indicated below.

Counsel	Via
Emily Newton U.S. Department of Justice 20 Massachusetts Ave. NW Washington, DC 20530 202/305-8356 Fax: 202/616-8470 Email: emily.s.newton@usdoj.gov	<input type="checkbox"/> United States mail, postage prepaid <input type="checkbox"/> Hand delivery <input type="checkbox"/> Fax <input type="checkbox"/> Email <input type="checkbox"/> FedEx <input checked="" type="checkbox"/> Efile
Kyla Snow DOJ-Civ Federal Programs Branch 1100 L. St. NW Washington, DC 20005 202/514-3259 Email: kyla.snow@usdoj.gov	
Audrey Calkins United States Attorney – Western District of Tennessee 167 N. Main Street, Suite 800 Memphis, TN 38103 901/544-4231 Fax: 901/544-4230 Email: audrey.calkins@usdoj.gov	

Dated: July 7, 2021.

Respectfully submitted,

s/ B. H. Boucek
BRADEN H. BOUCEK